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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,713	04/24/2001	Rodger H. Rast	EVRAHeadset_01	6278
26994	7590	01/12/2006	EXAMINER	
RODGER H. RAST 11230 GOLD EXPRESS DRIVE SUIT 310 MS 337 GOLD RIVER, CA 95670			GRIER, LAURA A	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/841,713	RAST, RODGER H.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Laura A. Grier	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 July 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1, 3-15, 17-19, 21-25 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 8-15, 17-19 and 21-25 is/are allowed.  
 6) Claim(s) 1 and 3-6 is/are rejected.  
 7) Claim(s) 7 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. The indicated allowability of claim 2 is withdrawn in view of the newly discovered reference(s) to Tuoriniemi et al. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Tuoriniemi et al., U. S. Patent No. 5978689.

Regarding claim 1, Tuoriniemi et al., (herein, Tuoriniemi) discloses a personal communication and audio system that includes a headset with 1<sup>st</sup> and 2<sup>nd</sup> speakers, a boom microphone, a switching means device, a preamplifier, and timing means for automatically disabling the switching mean a predetermined period of time (col. 3, lines 19-44, col. 5, lines 60-67, col. 6, lines 1-36, col. 10, lines 15-35, and 61-67 and col. 11, lines 1-22), which indicates an earpiece, an audio conversion device, a microphone attached thereto, an selection device, and signal conditioning circuit and a timing mechanism.

Regarding claim 3, Tuoriniemi discloses everything claimed as applied above (see claim 1). Tuoriniemi discloses the switch as a user-activated switch.

Regarding claim 4, Tuoriniemi discloses everything claimed as applied above (see claim 1). Tuoriniemi discloses headset with speakers coupled an audio device (audio broadcast programming (radio), CD player, etc.) and a telephone, which provides support of programming including music, and audio communications.

Regarding claim 5, Tuoriniemi discloses everything claimed as applied above (see claim 1). Tuoriniemi discloses squelching or muting the audio device (col. 5, lines 66-col. 6, lines 1-9 and col. 7, lines 1-8), which constitutes attenuating.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Tuoriniemi.

Regarding claim 6, Tuoriniemi discloses everything claimed as applied above (see claim 5). However, Tuoriniemi fails to disclose a specific level of attenuation such as of at least 20db. It well known in the art to vary the attenuation level. Thus, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to modify the invention of Tuoriniemi by implementing an attenuation level of at least 20db for the purpose of efficiently muting or squelching the audio device as optimally desired.

Claims 8-15, 17-19 and 21-25 are allowed.

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-15, 17-19, and 21-25 have been considered but are moot in view of the new ground(s) of rejection.

The applicant provided remarks in respect to the amended changes based upon previously objected to subject matter. However, in respect to independent claim 1 (dependent claims 3-6), upon further search and consideration, a new reference of prior art has been applied the claimed limitations that provides support of a time mechanism.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Grier whose telephone number is (571) 272-7518. The examiner can normally be reached on Monday - Friday, 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Laura A Grier  
Primary Examiner  
Art Unit 2644

January 9, 2006